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**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

IN RE APPLICATION OF :  
NAOHISA HIGASHIYAMA : EXAMINER: CIRIC, LJILJANA V  
SERIAL NO: 10/577,330 :  
FILED: APRIL 28, 2006 : GROUP ART UNIT: 3744  
FOR: HEAT EXCHANGER :  
:

**RESPONSE TO NOTICE OF NON-RESPONSIVE AMENDMENT**

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Election of Species Requirement stated in the Official Action dated August 27, 2009, and the Notice of Office Communication dated December 29, 2009, it is respectfully submitted that Applicant has provisionally elected the fourth species, Embodiment of Figures 10 through 16, and identified Claims 21-31 as readable on the elected species in the response filed September 18, 2009.

Applicant respectfully traverses the outstanding election requirement for the following reason.

MPEP §803 states the following:

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though it includes claims to independent or distinct inventions.

It appears that the claims according to the present invention are part of an overlapping search area and that a search for Claims 21-31 would necessarily include a search directed to the rest

of the claims as well. It is therefore believed that there is no undue burden on the Examiner to search all the claims under MPEP §803, and Applicant respectfully traverses the Election of Species Requirement on the grounds that a search and examination of the all the claims would not place a *serious* burden on the Examiner.

Accordingly, it is respectfully requested that the requirement to elect a single disclosed “species” be withdrawn, and that a full examination on the merits of Claims 1-41 be conducted.

Respectfully submitted,

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